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I 695 CASE BY ORDER OF JUDGES BRIDGE AND LEARNED TO
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Cashier Section
Superior Court Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

PORT OF WHITMAN COUNTY, PORT OF
TACOMA, PORT OF SKAGIT COUNTY,
PORT OF SEATTLE, PORT OF
LONGVIEW, PORT OF KENNEWICK,
PORT OF FRIDAY HARBOR, and PORT OF
BELLINGHAM,

Plaintiffs,

v.

STATE OF WASHINGTON, and THE "\$30
LICENSE TAB" INITIATIVE 695
COMMITTEE,

Defendants.

No. 00-2-01097-4SEA

COMPLAINT FOR DECLARATORY
JUDGMENT

RECEIVED BY RECEIVED ON

JAN 18 2000

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CHRISTINE O. GREGOIRE
ATTORNEY GENERAL
BY: *H. Regan Cullen*
ASSISTANT ATTORNEY GENERAL
H. Regan Cullen AAG
10:57 AM

INTRODUCTION

1. In this action, plaintiffs, Ports of Whitman County, Tacoma, Skagit County, Seattle, Longview, Kennewick, Friday Harbor, and Bellingham ("Port Districts") seek a declaration that Initiative 695 does not apply to rates, tariffs, fees, rents, assessments, local improvement district ("LID") and industrial development district ("IDD") assessments, and other charges imposed by the Port Districts in carrying out their constitutionally and statutorily authorized functions including, but not limited to, the operation of harbor and marina improvements, rail and motor vehicle transfer

COMPLAINT FOR DECLARATORY
JUDGMENT - 1

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1 facilities, water transfer and terminal facilities, airports and terminal facilities, industrial
2 development facilities, trade centers, and related commercial facilities. These rates, tariffs, fees,
3 rents, assessments, LID and IDD assessments, and other charges fall outside of the definition of
4 “taxes” made subject to a vote of the people by the provisions of Initiative 695.

5 PARTIES

6 2. Plaintiff, Port of Whitman County, is a Port District authorized pursuant to Title 53
7 RCW. The Port was formed following a vote of the people in 1958. The Port operates the following
8 facilities: water port sites, industrial parks, and a marina. The operations of such facilities are
9 authorized by Title 53 RCW. The Port also operates an airport as authorized by R.C.W. 14.07 et
10 seq. and R.C.W. 14.08 et seq. and Title 53 RCW. In the course of operating such facilities, the Port
11 imposes and/or has authority to impose, tariffs, fees, rents, assessments, LID and IDD assessments,
12 and other charges upon the users of Port facilities

13 3. Plaintiff, Port of Tacoma, is a Port District authorized pursuant to Title 53 RCW. The
14 Port was formed following a vote of the people in 1917. The Port operates the following facilities:
15 marine terminals, a grain elevator, industrial facilities, a foreign trade zone, the World Trade Center,
16 and warehousing and distribution facilities. The operations of such facilities are authorized by Title
17 53 RCW. In the course of operating such facilities, the Port imposes and/or has authority to impose,
18 tariffs, fees, rents, assessments, LID and IDD assessments, and other charges upon the users of Port
19 facilities.

20 4. Plaintiff, Port of Skagit County, is a Port District authorized pursuant to Title 53
21 RCW. The Port was formed following a vote of the people in 1964. The Port operates the following
22 facilities: industrial parks and a marina. The operations of such facilities are authorized by Title 53
23 RCW. The Port also operates Skagit Regional Airport as authorized by R.C.W. 14.07 et seq. and
24 R.C.W. 14.08 et seq. and Title 53 RCW. In the course of operating such facilities, the Port imposes
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1 and/or has authority to impose, tariffs, fees, rents, assessments, LID and IDD assessments, and other
2 charges upon the users of Port facilities.

3 5. Plaintiff, Port of Seattle, is a Port District authorized pursuant to Title 53 RCW. The
4 Port was formed following a vote of the people in 1911. The Port owns and/or operates the
5 following facilities: container handling and general-cargo terminals, fishing and recreational boat
6 marinas, warehouses, a grain terminal, chill facilities, a foreign trade zone, and a world trade center.
7 The operations of such facilities are authorized by Title 53 RCW. The Port also operates Seattle-
8 Tacoma International Airport as authorized by R.C.W. 14.07 et seq. and R.C.W. 14.08 et seq. and
9 Title 53 RCW. In the course of operating such facilities, the Port imposes and/or has authority to
10 impose, tariffs, fees, rents, assessments, LID and IDD assessments, and other charges upon the users
11 of Port facilities..

12 6. Plaintiff, Port of Longview, is a Port District authorized pursuant to Title 53 RCW.
13 The Port was formed following a vote of the people in 1921. The Port operates the following
14 facilities: marine terminal, warehousing, and a foreign trade zone. The operations of such facilities
15 are authorized by Title 53 RCW. In the course of operating such facilities, the Port imposes and/or
16 has authority to impose, tariffs, fees, rents, assessments, LID and IDD assessments, and other
17 charges upon the users of Port facilities.

18 7. Plaintiff, Port of Kennewick, is a Port District authorized pursuant to Title 53 RCW.
19 The Port was formed following a vote of the people in 1915. The Port operates the following
20 facilities: industrial parks. The operations of such facilities are authorized by Title 53 RCW. The
21 Port also operates an Airport as authorized by R.C.W. 14.07 et seq. and R.C.W. 14.08 et seq. and
22 Title 53 RCW. In the course of operating such facilities, the Port imposes and/or has authority to
23 impose, tariffs, fees, rents, assessments, LID and IDD assessments, and other charges upon the users
24 of Port facilities.
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1 8. Plaintiff, Port of Friday Harbor, is a Port District authorized pursuant to Title 53
2 RCW. The Port was formed following a vote of the people in 1950. The Port operates the following
3 facilities: industrial area, marina, seaplane base, public beach and boat ramp. The operations of such
4 facilities are authorized by Title 53 RCW. The Port also operates an Airport as authorized by
5 R.C.W. 14.07 et seq. and R.C.W. 14.08 et seq. and Title 53 RCW. In the course of operating such
6 facilities, the Port imposes and/or has authority to impose, tariffs, fees, rents, assessments, LID and
7 IDD assessments, and other charges upon the users of Port facilities.

8 9. Plaintiff, Port of Bellingham, is a Port District authorized pursuant to Title 53 RCW.
9 The Port was formed following a vote of the people in 1920. The Port operates the following
10 facilities: shipping terminal, cruise terminal, the Fairhaven Transportation Center, Squalicum Harbor
11 marina, Blaine Harbor marina, Sumas International Cargo Terminal, foreign trade zones, industrial
12 parks, and covered and open storage and warehousing facilities. The operations of such facilities are
13 authorized by Title 53 RCW. The Port also operates Bellingham International Airport as authorized
14 by R.C.W. 14.07 et seq. and R.C.W. 14.08 et seq. and Title 53 RCW. In the course of operating
15 such facilities, the Port imposes and/or has authority to impose, tariffs, fees, rents, assessments, LID
16 and IDD assessments, and other charges upon the users of Port facilities.

17 10. Defendant State of Washington is charged with the enforcement of enacted state
18 initiatives including Initiative 695. The State is also sued in its capacity as representative of the
19 citizens of the State of Washington.

20 11. Defendant The "\$30 License Tab" Initiative 695 Campaign (the "Initiative 695
21 Campaign") drafted and was the proponent for Initiative 695. They have asserted an interest in the
22 outcome of any litigation involving the interpretation of initiative 695. The Initiative 695
23 Campaign's interpretation of Initiative 695 differs on important points from the interpretation given
24 the initiative by the State.
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1 **JURISDICTION AND VENUE**

2 12. This Court has subject matter jurisdiction over this action pursuant to the Uniform
3 Declaratory Judgment Act, RCW 7.24 et seq. because a justicible controversy exists between the
4 Port Districts, on the one hand, and the State and the Initiative 695 Campaign regarding the
5 applicability of Initiative 695 to rates, tariffs, fees, rents and other charges imposed by the Port
6 Districts.

7 13. Venue for this action is proper in this court under R.C.W. 4.92.010 as the principal
8 place of business of the Port of Seattle is located in King County.

9 **FACTUAL BACKGROUND**

10 14. Since 1911, the State legislature has authorized the people of the State to approve by
11 election the creation of Port Districts to acquire, construct, maintain, operate, develop and regulate
12 certain transportation, industrial and related commercial facilities. Specifically, the State Legislature
13 has authorized the creation of Port Districts to acquire, construct, maintain, operate, develop and
14 regulate the following type of facilities: harbors; marinas; rail transfer and terminal facilities; motor
15 vehicle transfer and terminal facilities; other commercial transportation, transfer, handling, storage
16 and terminal facilities; industrial development facilities; trade centers; airports; and other activities to
17 promote economic development and tourism. The Port District plaintiffs have all been created
18 pursuant to a vote of the people to operate these type of facilities and engage in these type of
19 activities.

20 15. In the conduct of these operations, the State Legislature has authorized Port Districts
21 to levy and collect assessments, including LID and IDD assessments; to fix and/or negotiate rates
22 and charges for use of its facilities; to contract for the use of its facilities with other governmental
23 agencies; to lease or sublease real and personal property owned and controlled by it; and to issue
24 general obligation and revenue bonds. The authority, limitations and process to impose such rates,
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1 tariffs, fees, rents, assessments, LID and IDD assessments, and other charges are set forth
2 specifically by statute.

3 16. On November 2, 1999, Initiative 695 was enacted by the majority of voters in the
4 State's general election. The Initiative takes effect on January 1, 2000.

5 17. The Initiative purports to require "voter approval" of all "tax increases imposed by
6 the state." The Initiative defines "tax" to include, but is not necessarily limited to "sales and use
7 taxes, property taxes, business and operation taxes, excise taxes, impact fees, license fees, permit
8 fees and any monetary charge by government." "State" is defined to include "the state itself and all
9 its departments and agencies, any city, county, special district, and other political subdivision or
10 governmental instrumentality of or within the state."

11 18. The Initiative's definition of "tax" has been subject to varying interpretations and it is
12 unclear whether some of the rates, tariffs, fees, rents, assessments, LID and IDD assessments, and
13 other charges imposed by the Port Districts would constitute a "tax" subject to voter approval under
14 Initiative 695. The Port Districts believe that Initiative 695 does not apply to them because the rates,
15 tariffs, fees, rents, assessments, LID and IDD assessments, and other charges they impose fall
16 outside the reasonable and lawful definition of "taxes" as used in Initiative 695.

17 19. The uncertainty whether Initiative 695 applies to some rates, tariffs, fees, rents,
18 assessments, LID and IDD assessments, and other charges imposed by Port Districts will cause harm
19 to the Port Districts and their constituent citizens as they conduct their business, consider and adopt
20 budgets, and otherwise adopt and/or negotiate rates, tariffs, fees, rents, assessments, LID and IDD
21 assessments, and other charges. Such actions will be under cloud of potential litigation which may
22 result in Port District's having to disgorge certain rates, tariffs, fees, rents, assessments, LID and
23 IDD assessments, and other charges.

1 **FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

2 20. The Port Districts reallege the matters set forth in paragraphs 1 through 19 above.

3 21. There exists a controversy between the parties about whether Initiative 695 applies to
4 some or all of the rates, tariffs, fees, rents, assessments, LID and IDD assessments, and other charges
5 imposed by Port Districts.

6 22. The Port Districts seek a declaration that Initiative 695 does not apply to rates, tariffs,
7 fees, rents, assessments, LID and IDD assessments, and other charges imposed by them specifically
8 including, but not limited to (1) rates, tariffs, fees, rents, assessments, LID and IDD assessments, and
9 other charges imposed by Port Districts acting in a proprietary capacity, (2) rates, tariffs, fees, rents,
10 assessments, LID and IDD assessments, and other charges imposed for use of facilities, (3) rates,
11 tariffs, fees, rents, assessments, LID and IDD assessments, and other charges made pursuant to
12 contracts and/or other negotiated agreements, (4) rates, tariffs, fees, rents, assessments, LID and IDD
13 assessments, and other charges imposed by Port Districts that are not ordinarily understood to be
14 “taxes”, (5) rates, tariffs, fees, rents, assessments, LID and IDD assessments, and other charges
15 imposed by Port Districts that are not in any way a means to raise revenue to substitute for revenue
16 lost by Initiative 695’s repeal of the MVET, (6) rates, tariffs, fees, rents, assessments, LID and IDD
17 assessments, and other charges imposed by Port Districts in the nature of regulatory fees, (7) rates,
18 tariffs, fees, rents, assessments, LID and IDD assessments, and other charges imposed by Port
19 Districts due to requirement of federal or state law, (8) rates, tariffs, fees, rents, assessments, LID
20 and IDD assessments, and other charges imposed by Port Districts in the nature of inter- and intra-
21 governmental payments and charges, (9) rates, tariffs, fees, rents, assessments, LID and IDD
22 assessments, and other charges imposed by Port Districts necessary to meet contractual, including
23 bond, obligations, (10) rates, tariffs, fees, rents, assessments, LID and IDD assessments, and other
24 charges imposed by Port Districts in the nature of pass-throughs of taxes and charges assessed by
25 other state and local agencies; and (11) rates, tariffs, fees, rents, assessments, LID and IDD
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1 assessments, and other charges imposed by Port Districts that are specifically authorized by the State
2 legislature that were not referred to or otherwise specifically repealed by Initiative 695.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff Port Districts request the following relief:

- 5 1. Entry of a declaratory judgment as described in paragraph 22 above;
6 2. The award of fees and costs incurred in bringing this suit to the extent permitted by
7 law;
8 3. Such other and further relief as the Court deems just and equitable.

9 DATED this 12th day of January, 2000.

10 PRESTON GATES & ELLIS LLP

11 By 
12

13 Paul J. Lawrence, WSBA # 13557

14 Carol S. Arnold, WSBA # 18474

15 Robert W. Ferguson, WSBA #26004

16 Attorneys for Plaintiffs, Ports of Whitman County,
17 Tacoma, Skagit County, Seattle, Longview,
18 Kennewick, Friday Harbor, and Bellingham.